

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Consumer Financial Protection Bureau,

Plaintiff,

v.

Navient Corporation, *et al.*,

Defendants.

Case No. 3:17-CV-00101-RDM
(Hon. Robert D. Mariani)

FILED UNDER SEAL

**PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION TO
DEFER THE DEADLINE FOR ITS RESPONSE TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT AND
TO PROHIBIT FURTHER MOTIONS FOR
SUMMARY JUDGMENT BEFORE THE CLOSE OF DISCOVERY**

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INTRODUCTION

After substantially delaying the production of documents and data, Navient now tries to benefit from those delays by moving for partial summary judgment on the “steering” claims in the Bureau’s complaint (counts I and II) before the Bureau has had the opportunity to review, or even obtain, documents and calls it has requested. Navient’s motion is procedurally improper, and the deadline for the Bureau’s response to the motion should be deferred, for three principal reasons.

First, the case is in active discovery, and just four months ago, Navient produced 455,000 documents responsive to requests issued by the Bureau in May 2017. It is not feasible for the Bureau to have completed its review of those documents by now, much less take all of the depositions it is entitled to take based on the information it learns from that review. While the Bureau’s review is ongoing, the Bureau has discovered substantial documentary evidence supporting its steering claims, including evidence in Defendants’ most recent production. It is not surprising that Navient seeks to dismiss those claims before the Bureau can complete its review. Navient also filed its motion at a time when the parties are engaged in an extremely busy phase of discovery, with a full slate of issues to be litigated before the recently-appointed special master, all of which need to be resolved in approximately four months.

Second, to this day, six months after the Bureau expressed concerns to the Court that Navient had not produced documents and calls for borrowers who had already been deposed, and after the Court had set forth a procedure to ensure that those records would be produced, Navient still has not produced all of the documents and calls requested by the Bureau. Now, as the Bureau presses Navient on its failure to produce the missing documents and calls for borrowers whom Navient deposed, Navient has made those borrowers the centerpiece of its summary judgment motion before that dispute is even resolved. And Navient ironically claims that “the entire course of dealing between Navient and the borrowers must be considered” (Navient Brief, at 16), even while it has not completed productions that would reveal those “entire course[s] of dealing.”

Third, Navient asks the Court to grant summary judgment by engaging in a borrower-by-borrower loan file review. But paradoxically, Navient also argues that “isolated phone calls are not evidence of a Company practice.” Navient Brief, at 19. Thus, even Navient seems to understand that file-level review for 14 borrowers (whose records have not even been fully produced) is not the correct way to adjudicate this case. This is not an action in which 14 borrowers brought suit against Navient; rather, the Bureau’s allegations are that Navient engaged in a widespread practice of steering that was not limited to those 14 borrowers. And, as described in more detail below, the Bureau already has uncovered substantial

evidence demonstrating that Navient's "Company practice" was indeed to steer borrowers facing hardships that were not temporary or short-term into forbearance. The Bureau should be allowed to complete development of the record concerning Navient's "Company practice."

By filing the motion, Navient seeks to deprive the Bureau of an opportunity to complete discovery – which has, thus far, supported the Bureau's claims. Navient should not be allowed to short-circuit the discovery process and the development of a full record for the factfinder. Thus, discovery should be allowed to run its course, and the deadline for the Bureau's response should be deferred until 21 days after the deadline for motions for summary judgment, which is currently set at November 7, 2019. Doc. 141, ¶ 4a. In addition, so that the parties do not divert resources from the important tasks that are necessary to bring discovery to a close so that this matter can be adjudicated on a complete record, rather than on a piecemeal basis, the Bureau requests that the parties be prohibited from filing further summary judgment motions before the close of discovery.

FACTS AND PROCEDURAL HISTORY

I. The Bureau's Steering Claims

The first two counts of the Bureau's complaint allege that Navient violated the Consumer Financial Protection Act's prohibitions against abusive acts and practices, 12 U.S.C. §§ 5531(d)(2)(C), 5536(a)(1)(B), and unfair acts and practices,

12 U.S.C. §§ 5531(c), 5536(a)(1)(B), when Navient steered federal loan borrowers experiencing financial hardship that was not short-term or temporary into forbearance, before or instead of advising them about income-driven repayment (“IDR”) plans. IDR plans allow borrowers to pay an amount that is based on their current income and household size, thereby accounting for the fact that borrowers’ incomes may fluctuate over time. The payments can be as low as zero dollars if a borrower’s discretionary income is not sufficient to pay any portion of his or her student loans, such as during a period of unemployment.

While forbearance can be appropriate for short-term or temporary hardships, borrowers who enroll in forbearance face significant costs, which generally increase the longer the borrower is in forbearance, making it a significantly worse option than IDR for borrowers experiencing a long-term hardship. Some of these costs include the accumulation of unpaid interest and the addition of that unpaid interest to the principal balance of the loan (typically called interest capitalization). In addition, in some cases, after a forbearance, a loan may be reamortized, which can lead to an increase in the borrower’s monthly payment amount. Borrowers who enroll in forbearance, rather than IDR, also do not make any progress toward potential loan forgiveness, nor are they eligible for an interest subsidy available to

borrowers with subsidized loans enrolled in IDR. The high use of forbearance is also associated with increased rates of borrower defaults.¹

II. Steering Did, In Fact, Occur

While the parties are engaged in ongoing discovery and the record continues to be developed as the Bureau reviews Defendants' productions and takes additional depositions, the documentary evidence uncovered thus far, as well as deposition testimony, corroborate the Bureau's allegations. For example, a June 2010 memorandum demonstrated that the culture of promoting forbearance at Navient was so pervasive that the company had a "battle cry" about it: "Our battle cry remains '*forbear them, forbear them, make them relinquish the ball.*'" A2 (emphasis in original).² The memorandum noted that, for borrowers whose accounts Navient brought out of delinquency, 70% were being placed in forbearance. *Id.*³

¹ Navient writes that forbearance and IDR are "complementary" because borrowers "often need forbearance to allow time to complete IDR paperwork." Navient Brief, at 3. This is a red herring; as Navient well knows, this case is *not* about the use of administrative forbearances, which are typically three months or less and are designed to give borrowers time to apply for IDR.

² "A__" refers to a page of the appendix filed with this brief.

³ The memorandum also stated that "we are very liberal with the use of forbearance once it is determined that a borrower cannot pay cash or utilize other entitlement programs." A2. Under ED regulations, "entitlement programs" refers to deferment and grace periods, not to IDR. *See* 34 C.F.R. § 682.210 (describing

The high rate of enrollment in forbearance for borrowers in distress was not surprising in light of the fact that Navient provided its call center representatives with a job aid that directed representatives to steer borrowers facing financial difficulty toward forbearance. The first page of the job aid contains a decision tree that guides the representative to ask “Can the borrower pay some portion?” A5. IDR plans are shown as options available to borrowers who can afford a payment, while forbearance and deferments are the only options shown to be available to borrowers who cannot make any payment. *Id.* Following the lead of the decision tree, the second page of the job aid is a matrix that sorts repayment options according to whether a borrower “Can Make Monthly Payments” or “CAN NOT Make Monthly Payments.” A6. Again, IDR plans are listed only under the category “Can Make Monthly Payments,” while forbearance and deferment are the only options listed for borrowers who “CAN NOT Make Monthly Payments.” *Id.*

While Navient repeatedly touts in its brief that it informed students that “You could even qualify for a payment of \$0!”, Navient employees confirmed that, dating back to at least 2011, Navient did not offer IDR to borrowers who could not afford to make payments. For example, the head of all four of Navient’s call

“entitle[ment]” to deferments); 34 C.F.R. § 685.207 (describing “entitle[ment]” to grace periods).

centers stated that he had not been aware, during most or all of his tenure from 2011 to 2012, that IDR was even an option for borrowers who could not afford to make payments. A9. And a Navient call center supervisor confirmed that, through at least 2012 and perhaps for years after that, the job aid that guided calls with delinquent borrowers did not include IDR as an option. A13.

Consistent with the fact that Navient did not adequately advise borrowers about IDR, the Bureau is already in possession of dozens of calls in which steering occurred, which were obtained through Navient's document productions (for example, calls attached to internal emails). And the Bureau has not yet obtained in this litigation a sample of calls for review, but is currently in the process of negotiating the parameters of that call sample production.

Navient's steering of borrowers into forbearance came to the attention of third-party student loan counselors, who were puzzled by Navient's refusal to offer IDR plans to borrowers who were obvious candidates for it. For example:

- Employees of the i3 Group – a third-party counseling service – observed in 2013: “We have been experiencing [Navient] reps who are refusing to send out the IBR, hanging up after the forbearance is read, and then also refusing to put a supervisor on the line when requested.” A16. A Senior Vice President from i3 brought the issue to Navient's attention, explaining how Navient representatives were “not wanting to offer IBR”

or were making up restrictions about IBR eligibility to avoid offering IBR. A183-84.⁴

- Loan counselors at the University of Phoenix made similar observations in 2013, following an incident in which Navient representatives “refused to go over IBR” with a borrower with no income. A19. University of Phoenix representatives received confirmation from two different Navient representatives that it was Navient’s policy “that if a student says they cannot make any payments that [Navient] go over *only* Deferment and Forbearance options.” A18-19 (emphasis in original).

Navient’s internal emails also demonstrate that Navient employees reviewing calls were providing samples of steering that they thought would be brought to the attention of Navient’s CEO. For example, in February 2014, Navient personnel flagged for CEO Jack Remondi’s attention a borrower call where the borrower was placed in forbearance even though she “may have qualified for IBR.” A22. Through at least 2016, the issue of borrower steering had persisted, with examples of problematic calls having been brought to Mr. Remondi’s attention on at least four additional occasions. A27, 29, 32, 35.

In 2017, the Department of Education (“ED”) conducted a review of Navient’s call center activities, and after listening to a sample of calls, ED concluded that, in some of those calls, “Navient CSRs neglected to offer the borrower an option other than forbearance.” A40. ED noted that “[t]he use of

⁴ IBR stands for income-based repayment, which is one of the types of plans that falls under the broader umbrella phrase of IDR plans.

forbearance in lieu of any other options can cause more undue hardship to a borrower in the long term.” *Id.*

According to former employees of Navient, the occurrence of steering was also a consequence of Navient’s compensation policies. Navient’s compensation policies for its customer service personnel incentivized them to deal with calls quickly, which resulted in borrowers not being advised about IDR plans or being directed toward forbearance. As one former employee recounted: “The company fostered a culture within the call center that prioritized speed in resolving borrower calls. The company imposed a requirement that employees maintain an average call time of approximately seven minutes. It initially conveyed the requirement during training. Managers reinforced the requirement through regular feedback sessions.” A88-89. Employees were informed daily or weekly how their average call time compared with their peers through tracking spreadsheets sent to employees by email that showed the names of employees along with their average call times. A former employee described these reports as follows: “The spreadsheet ranked employees according to the colors green, yellow, and red. Top performers were green. Marginal performers were yellow. And poor performers were red.” A89. Thus, “[n]ot only did I know what my average call time was, I knew where I stood relative to other customer service representatives.” A90. Navient employees understood that the way to achieve short call times was to offer

forbearance. If a borrower called to discuss repayment options, and the representative placed the borrower into forbearance, that could be accomplished in under 3.5 minutes. A102. In contrast, discussing IDR would be a much longer conversation. A93-94.

Even though call representatives had their calls audited on a monthly basis by their supervisors, this auditing was not thorough, nor was it designed to prevent incidents of steering. A supervisor was required to listen to only five calls per month for each agent, and those five calls could cover any subject, including topics unrelated to choosing a repayment plan. A100-01. Even if, in these limited audits, a representative was deemed not to have properly discussed IDR as a repayment option, the representative's conduct would not be written up in any way or lead to any sort of warning. A108-09.

Finally, Navient has always understood that sending boilerplate written information about IDR does not give it *carte blanche* to give borrowers inadequate advice over the phone. To the contrary, despite what Navient is now arguing in this litigation, Navient has always known that struggling borrowers faced with the complexity of repayment options rely on phone advice, and Navient has encouraged borrowers to trust that they can receive accurate advice by phone. Indeed, in 2016, Navient urged to the FCC that regulations concerning phone contact should be changed to remove "impediments . . . to reaching and helping

struggling and at-risk borrowers” because of “the importance of [phone] contact.” A116. Navient summarized its position as follows: “one thing has become crystal clear from our years of experience: live contact with borrowers is key to helping them navigate the multitude of options and the complexity of the repayment system.” A117.

III. Navient’s Incomplete Production of Borrower Records

Against this backdrop of evidence that Navient had a systemic practice of steering, Navient has pursued a consistent strategy in this litigation of trying to hinder key aspects of discovery. For example, with respect to the production of emails, Navient initially took the remarkable position that it would produce virtually no internal emails about the Bureau’s steering claim and various other practices alleged in the complaint. The Bureau was required to seek the involvement of the Court to compel production of those emails. *See* Doc. 74. And indeed, the productions have and are continuing to yield evidence supporting the Bureau’s claims, as described above. Similarly, Defendants resisted production of contact information of former employees, again requiring the Bureau to seek the involvement of the Court. *See* Doc. 99. And by contacting those former employees, the Bureau continues to learn information corroborating its claims.

Another front in Navient’s ongoing battle to hinder discovery has been to resist production of records and calls for borrowers whom Navient is deposing. Put

differently, Navient has taken the position that borrowers are not entitled to see all of the loan records and calls that Navient has in its possession about them. *See, e.g.,* A125-27, 129, 133, 136-37, 140, 144. The Bureau raised this issue with the Court at the August 8, 2018 hearing, specifically noting that the Bureau had become aware that relevant documents – such as letters confirming enrollment in verbal forbearances – were being withheld for borrowers being deposed. *See* Aug. 8, 2018 Hearing Transcript, at 39:13-40:25. The Bureau also noted that calls in which borrowers agreed to enroll in forbearances were not being produced. *Id.*; *see also* Doc. 99.

At that hearing, the Court asked Navient's counsel about its questionable claim that producing all documents and calls for approximately 25 borrowers being deposed would be too burdensome: "Aren't the files of individual borrowers maintained by Navient in some coherent fashion, such that if you want to access the file of [a] borrower it can be done without a great deal of work and effort? I mean, are you telling me that's not the case?" Aug. 8, 2018 Hearing Transcript, at 51:10-14.

Navient responded as follows with respect to borrower correspondence: "I don't know if you remember the old dos [sic, DOS] screens with like black – black screens with the green flashing – green flashing language So it's like that. And in order – so what we look at is we look at that screen, and there's a screen

that shows the whole history of the loan. . . . [Y]ou have to look at that screen, click – click the entry, that gets sent to another part of the business, downloaded, and then we can produce it.” *Id.* at 51:23-52:11.

With respect to call recordings, Navient stated as follows: “And I can tell you that the company cannot pull them by account numbers. . . . Instead, we have to look at the call notes, look at the time and date, go to the system where that call would have been located, match the time and date with the agent name who took the call and see if we can find the borrower’s call.” *Id.* at 52:18-24.

Based on these explanations, the Court set out the procedure by which the Bureau could request documents withheld: the Bureau would “look at the loan history” to be provided by Defendants, “identify the calls [and correspondence] that relate to the specific activities at issue,” and Navient would then have to “go and try to locate those calls and correspondence.” *Id.* at 52:9-11; 55:19-24.

Information that the Bureau has learned since that hearing raises serious doubts about the accuracy of the descriptions Navient provided about the process of locating borrower correspondence and calls and the associated burden. During an onsite visit to a Navient servicing center for purposes of finalizing the Bureau’s data requests, the Bureau learned that borrower calls and correspondence are indeed maintained in a “coherent fashion.” All correspondence can be queried by a borrower’s social security number, and that correspondence is located in a white-

screen database (with no flashing text) that does not resemble DOS at all. *See* A147 (screenshot of database showing borrower documents queried by social security number). In addition, all of that correspondence can be opened and downloaded without having to make contact with another business area. And in separate databases (which, again, have white screens with no flashing text, and do not look like DOS), a borrower's calls typically can be retrieved simply by querying that borrower's phone number. *See* A149, 151, 153 (screenshots of databases showing borrower calls queried by phone number). Indeed, a current Navient call supervisor described the process of locating calls as straightforward: "I usually don't struggle to find calls. Like it's pretty easy to find the calls most of the time. . . . I honestly have never had a time that I've run into where I couldn't find a call." A103, 105. In sum, the documents for specific borrowers are segregated in "coherent fashion," and claims of excessive burden to download all of those documents do not withstand scrutiny.⁵

⁵ It would seem to take more effort for Navient's counsel to engage in a process of listening to all calls for a borrower, and reading all correspondence with the borrower, to determine what to produce and what to withhold, rather than to simply produce all of a borrower's documents and calls. And, on some occasions, Navient has delayed borrower depositions due to the inability to timely make their selective production of records for the borrower to be deposed. Thus, it appears that the culling exercise that Navient's counsel performs, not the process of

After the August 8, 2018 hearing, pursuant to the Court's instructions, Navient produced a loan history log for each borrower, printed from a screen in their servicing system, so that the Bureau could determine what potentially relevant items on those logs were withheld and should have been produced.⁶ The Bureau compared Navient's productions for borrowers with their loan history logs, and discovered a significant volume of potentially relevant calls and correspondence that had not been produced. (A 26-page list of documents and calls that the Bureau believed had not been produced is attached at A156-81). The Bureau requested that Navient produce all of those documents and calls on December 7, 2018. A155. To date, Navient has not yet produced all of the calls and correspondence on that list, despite the procedure that the Court set forth at the August 2018 hearing requiring them to do exactly that.⁷ The Bureau also expressed

gathering all documents and calls associated with the borrower, is what is labor intensive.

⁶ These logs should have been produced in advance of the borrower depositions, as they are unquestionably relevant. Navient's counsel admits that they consulted these logs to determine what to produce, and thus they made the conscious decision that the logs themselves would be among the items to improperly withhold before the depositions occurred. The logs include relevant information about the specific dates borrowers contacted Navient, and in certain instances, the apparent outcome of those calls.

⁷ The Bureau received a small production of documents and calls on February 5, 2019 in response to the 26-page list from the Bureau. The Bureau is in the process of reviewing that production, but it is evident to the Bureau that some

concerns that some loan history logs had been improperly withheld (A155), and Navient did not respond to that concern.

While the Bureau is continuing to pursue this issue with Defendants and intends to seek relief if relevant records continue to be withheld, Navient ironically has made the experiences of borrowers whose records they have not fully produced the centerpiece of their motion.

STATEMENT OF QUESTION INVOLVED

Should the deadline for Bureau's response to Navient's motion for partial summary judgment be deferred until 21 days after the deadline for filing summary judgment motions, and should the parties be prohibited from filing further summary judgment motions before the close of discovery?

Suggested answer: Yes, because: (a) the parties are in the middle of active discovery; (b) Navient has acknowledged that this case should be about "Company practice" (Navient Brief, at 19), and while the Bureau is still reviewing Navient's document production, the Bureau has already uncovered substantial evidence showing a "Company practice" of inadequately advising borrowers about IDR; and

items from the 26-page list have not been produced. It appears that some of the calls on the 26-page list were not retained, but the Bureau has not received a response to its inquiry regarding which calls were not retained and when the non-retention occurred. *See* A155.

(c) the motion is based on the experiences of specific borrowers for whom Navient has not fully produced potentially relevant documents and calls.

ARGUMENT

Navient's motion is premature because discovery is not complete.

Accordingly, the Bureau's response to the motion should be deferred until 21 days after the deadline for summary judgment motions, which is after the close of all discovery. In addition, for the efficiency of this case – including so that the parties can focus their efforts on bringing fact discovery to a close in four months – further summary judgment motions before the close of discovery should be prohibited.

Navient's motion is an attempt to short-circuit the Bureau's ability to create an adequate record through the discovery process. Yet "it is well established that a court 'is obliged to give a party opposing summary judgment an adequate opportunity to obtain discovery' because, by its very nature, the summary judgment process presupposes the existence of an adequate record." *Doe v. Abington Friends Sch.*, 480 F.3d 252, 257 (3d Cir. 2007); *see also Shelton v. Bledsoe*, 775 F.3d 554, 565 (3d Cir. 2015) (noting that "[i]f discovery is incomplete, a district court is rarely justified in granting summary judgment").

Navient is undoubtedly aware that it is not feasible for the Bureau to have completed review of Navient's document productions. Navient recently insisted upon *seven weeks* to review the Bureau's forthcoming production of the non-

privileged documents from a universe of 55,000 documents mentioning the words “Navient” or “Pioneer.” *See* Doc. 155, at 1. Thus, it is not realistic for Navient to expect the Bureau to review a volume of documents that is *over eight times as large* in the four months that have elapsed since Navient produced those documents, let alone for the Bureau to supplement its Rule 26(a)(1) disclosures and notice and take additional depositions based on information from those documents. In addition, in mid-January 2019, Navient produced certain borrower data that the Bureau requested in *February 2018*; the 11-month production period included approximately 9 months in which Navient sought to block the production entirely. This delay prevented the Bureau from being able to analyze this data and select a call sample for production based on the data by this point in the discovery process. Navient also delayed production, until September 2018, of contact information for former call center employees, which limited the Bureau’s ability to interview these individuals, supplement the Bureau’s Rule 26(a)(1) disclosures with additional potential witnesses, and notice and take depositions, if necessary. Had Navient produced this information when its interrogatory responses were due in late March 2018, the Bureau could have begun its outreach over five months earlier.

In addition, though the review of Navient’s productions is ongoing, the Bureau has already obtained significant evidence showing that Navient’s “Company practice” was that it did not adequately advise borrowers about IDR. As

described above, this evidence includes internal emails, job aids, calls, observations from third-party student loan counselors, a review by ED, and Navient's own acknowledgement about the importance of calls with borrowers in helping them understand repayment options. The Bureau should be allowed to fully develop this evidence, including by completing its review of Navient's productions and by obtaining a sample of calls.

Finally, as described above, Navient's motion is premised on the experiences of borrowers whom Navient has subpoenaed and deposed, yet Navient has not produced all of the correspondence and call recordings that would allow for these borrowers' experiences to be fully understood. For example, even though many of those borrowers ultimately enrolled in IDR, that is not surprising: it is possible that Navient changed some of its practices in response to the Bureau's investigation, this lawsuit, and the lawsuits filed by the Attorneys General of five states, and thus many borrowers who had extended periods of forbearance were eventually informed about IDR during phone conversations with Navient and enrolled in IDR. However, for the periods preceding IDR enrollment, Navient has not produced relevant documents concerning those borrowers (such as letters confirming enrollment in verbal forbearances), as well as numerous calls in which forbearance enrollment occurred. Their experiences cannot be accurately and

completely presented until all of their relevant documents and calls are produced and analyzed.

In light of these factors, as well as a host of discovery issues to be litigated before the special master, an adequate record in this case has yet to be developed, and summary judgment is inappropriate. *See, e.g., Smithson v. Rizzo*, 2015 WL 1636143, at *5 (M.D. Pa. Apr. 7, 2015) (denying motion for summary judgment as premature); *Humbert v. Kurtz*, 2008 WL 719244, at *8 (M.D. Pa. Mar. 14, 2008) (same); *La Fata v. Raytheon Co.*, 223 F.Supp.2d 668, 680 (E.D. Pa. 2002) (same).

The information asymmetry found in enforcement actions such as this disproportionately favors Navient. Its conduct is at the heart of the case, and it is in possession of the vast majority of relevant information. The above-described events have exacerbated this asymmetry, putting the Bureau at an unfair disadvantage. This case involves important issues affecting potentially hundreds of thousands of consumers. The factfinder should have a full evidentiary record to resolve these issues. *See, e.g., Doe*, 480 F.3d at 257 (noting that deferring consideration of summary judgment is particularly appropriate “when there are discovery requests outstanding or relevant facts are under the control of the moving party”). The Bureau would be severely prejudiced by a premature

adjudication of a summary judgment motion, especially in light of Navient's delayed and incomplete productions to date.

In addition, in light of the discovery issues that need to be resolved, it would be inefficient for the parties to litigate, and for the Court to adjudicate, a summary judgment motion now. The parties should be working toward resolution of a litany of discovery disputes to complete development of the factual record in this case, not diverting resources to briefing premature motions. Particularly in light of potentially serious issues concerning Navient's deficient production of records relating to borrowers who have already been deposed and who are at the center of Navient's motion, the record in this case is "so significantly clouded . . . that resolution of [a] motion for partial summary judgment . . . at this time would constitute an inefficient use of judicial resources and frustrate the purpose of summary adjudication." *Advanced Fluid Sys., Inc. v. Huber*, 2015 WL 1729375, at *1 (M.D. Pa. Apr. 15, 2015); *see also Dean v. Douglas*, 2012 WL 6151137, at *6 (M.D. Ga. Dec. 11, 2012) (denying motion for partial summary judgment on the basis of efficiency); *In re G-I Holdings Inc.*, 2007 WL 1412294, at *4 (D.N.J. May 14, 2007) (same).

CONCLUSION

For the foregoing reasons, the Bureau respectfully requests that the Court enter the attached proposed order deferring the deadline for the Bureau's response

to Navient's motion for partial summary judgment until 21 days after the deadline for motions for summary judgment and prohibiting the parties from filing any further summary judgment motions until both fact and expert discovery have concluded.

Dated: February 6, 2019

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.8(b)(2), I hereby certify that the foregoing brief in opposition contains 4614 words.

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CERTIFICATE OF SERVICE

I certify that, on February 6, 2019, I served the foregoing document and the accompanying materials by email to the following counsel for Defendants:

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Arin Smith: arin.smith@wilmerhale.com

Donna Walsh: dwalsh@mbklaw.com

Mr. Kearney previously consented to service by email on Defendants' counsel.

/s/ Nicholas Jabbour

Nicholas Jabbour, DC 500626

Nicholas.Jabbour@cfpb.gov

1700 G Street NW

Washington, DC 20552

Phone: 202-435-7508

Fax: 202-435-9346

Attorney for Plaintiff

Exhibit C

**APPENDIX TO PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION TO
DEFER THE DEADLINE FOR ITS RESPONSE TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT AND
TO PROHIBIT FURTHER MOTIONS FOR
SUMMARY JUDGMENT BEFORE THE CLOSE OF DISCOVERY**

Exhibit	Description of exhibit	Beginning page number
(1)	Navient internal memorandum	(A1)
(2)	Navient job aid	(A4)
(3)	Excerpts from deposition of Matthew Bailer	(A7)
(4)	Excerpts from deposition of Suzanne Croft	(A10)
5	Internal emails from i3 Group	A14
6	Emails between Navient and University of Phoenix	A17
(7)	Internal emails from Navient	(A21)
(8)	Internal emails from Navient	(A26)
9	Department of Education Site Visit Review	A38
10	Declaration of Lynn Sabulski	A85
(11)	Excerpts from deposition of Johnathan Powell	(A98)
12	Excerpts of Navient comments on FCC proposed regulations	A111
13	Excerpts from borrower deposition	A121
14	Email chain among borrower, Bureau's counsel, Defendants' counsel	A128

15	Email chain between Bureau's counsel and Defendants' counsel	A132
16	Email chain between borrower and Defendants' counsel	A135
17	Email chain between borrower and Defendants' counsel	A139
18	Email chain between borrower and Defendants' counsel	A143
19	Screenshot from Navient correspondence database	A146
20	Screenshot from Navient call database	A148
21	Screenshot from Navient call database	A150
22	Screenshot from Navient call database	A152
23	Email between Bureau's counsel and Defendants' counsel	A154
24	Email chain between i3 Group and Navient	A182

Exhibit 1

Jack,

CRS is meeting with you in June for a business review and we are planning on discussing the topics you brought up on the attached document. As a preview to our June meeting, the "not so short" answers to your questions are below.

Question #2) ED COLLECTION STRATEGY?

The Vision for CRS and the ED servicing business has not changed from what we presented to you in December. We want to put ourselves (CRS) out of businesses by driving borrowers to self-serve and use automation via email, text, web, letters, dialer, IVR etc. We recognize that this is a thin margin business, therefore, our goal is to drive down unit cost while maximizing fee revenue and winning the default scorecard. As of today, CRS, IT, and Channel strategies, "we", have been unsuccessful in getting low-cost, self-service channels operationalized. Email is up and running but the other channels are still in development.

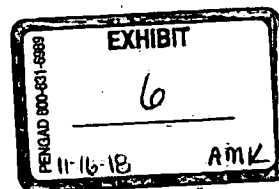
We view Borrower Education as another key component of our mission. There are numerous programs in addition to FORB that allow students to resolve their delinquency. We need to point them to the optimal solution based on their unique circumstances (optimal solution for the student and the firm).

Desk Loads and Bucket Segmentation Strategies - CRS pools the entire 60+ delinquent ED borrower base and calls it on the dialer about 2.5 times daily with about 110 agents. Account loads are in the neighborhood of 1,800. We have targeted strategies to maximize servicing fee revenue in the early stages. In the 1-30 and 31-60 day buckets we use models to determine who is likely to self-cure, we then dial and email everyone who is not likely to cure in order to "throw them over the fence" to the higher fee tier (example = ~\$1.44 average delinquent borrower fee flipped to the ~\$2.11 up to date borrower fee). Team Tomko built the models and will be validating the effectiveness.

The only other "bucket segmentation" strategy that we have in CRS involves a team of 20 collectors who are working in a pre-charge-off capacity, 270+. This is not a fee revenue strategy but an effort to prevent defaults on borrowers who landed in severely delinquent buckets as part of the PUT process and ECASLA. We implemented the pre-charge-off strategy in the short term to get out of the gate strong on the scorecard; whether it makes sense long-term is TBD.

Forbearance - Our battle cry remains *"forbear them, forbear them, make them relinquish the ball."* Said another way, we are very liberal with the use of forbearance once it is determined that a borrower cannot pay cash or utilize other entitlement programs. Generally speaking, out of every 10 resolved ED borrowers, 7 will forbear, 1 will pay cash, and 2 will use a deferment or some other entitlement. That mix is likely to change over time as we improve our ability to communicate the benefits of and fulfill other programs such as "Income Based Repayment."

Dollars Collected - In CRS alone, we are collecting about \$150mm per month and resolving about 40,000 borrowers - these are not meaningful metrics by themselves. A more useful perspective would be the default rate trend. Our ED default rate is trending towards 12% - 15% versus FFELP historical default rates of roughly 10% (See Chart 1 below for a comparison of ED and FFELP collection rates). This performance gap should be expected given the adversely selected portfolio in ED. Proprietary school borrowers make up over 60% of the 1+ delinquent ED portfolio versus about 40% of the 1+ delinquent FFELP portfolio (Prop school delinquency runs nearly double non-prop). Driving the performance variance to a lesser degree are the staffing / dialer issues that we faced in Q1 due to the fact that the delinquent borrower count was more than five times the budgeted / planned volumes. Although ED is lagging in default prevention performance when compared to FFELP, we should not assume that we are lagging behind our three competitors in the ED Servicing contract. To state the obvious, we won't really know where we stand relative to the competition until the scorecard results are published on a quarterly basis.



Questions #3 and #4) COMBINING SERVICING, COLLECTIONS, AND SALES INTO A SINGLE P&L UNIT

Yes. We don't believe the current structure is optimal and we would support evaluating a re-org. Although combining Servicing and Collections makes sense, we need to include the P&L Manager and the Dept. of Ed relationship folks all under one organization. This appears to be what you are proposing.

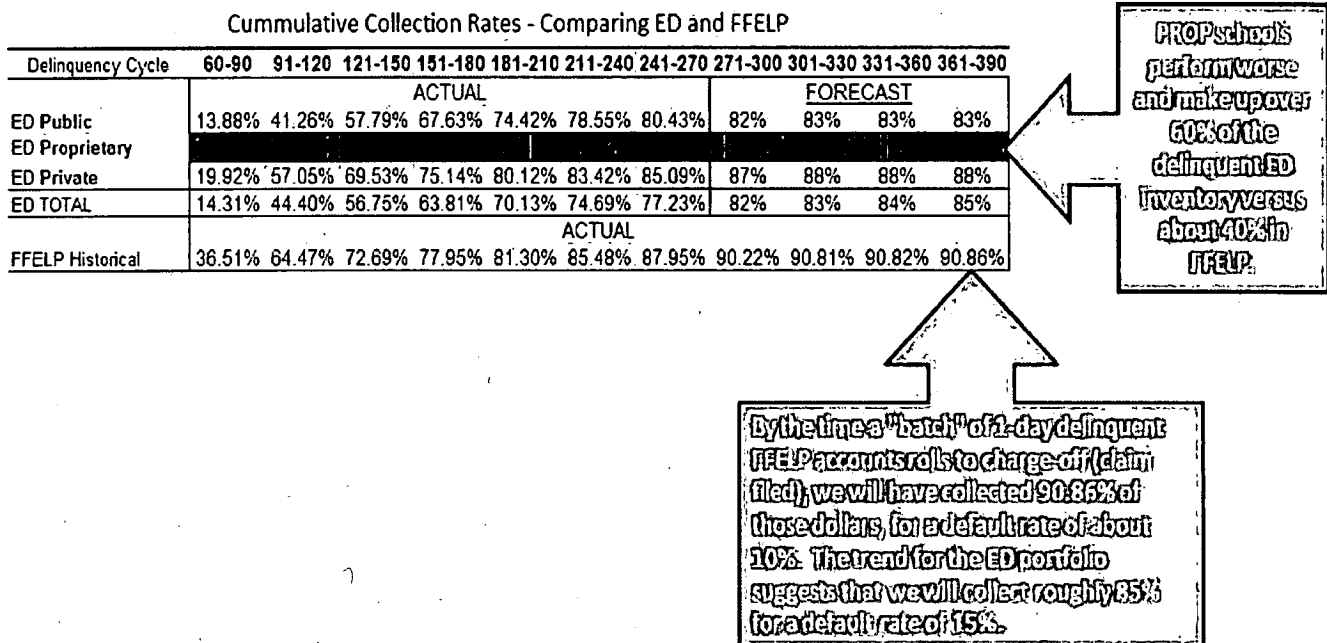
Chart 1: CRS Collection Rates in ED and FFELP.

Exhibit 2

Determine the Root Cause of Financial Difficulty

Communicate to the borrower your desire to help by using a transitional phrase:

"I understand that you are having problems making your payments."

Let me ask you a few questions and then we can see what options we have available for you."

Account information to look at...

1. How long has the borrower been in repayment?
2. How far delinquent is the account?
3. What type of school did the borrower attend?
4. Loan balance
5. Payment history

Things to think about:

1. What is the borrower's future earning potential?
2. Where is the borrower in their career life cycle?
3. Is this the first time the borrower called about payment issues?
4. How does the borrower's income compare to their balance?
5. Has the borrower already researched their options?
6. Can the borrower comfortably/consistently make payments?

"I want to assure you that there are many different repayment options and that I am here to help find an option that works for you"

"Extended Repayment is a great way to lower your monthly payment without the need for consolidation."

Extended Repay or IBR

Long
Term

Is the borrower looking for short-term or long-term relief?

Short-term

Graduated Repayment or ISR

YES

Can the borrower pay some portion?

Remember that deferments are entitlements

NO

Most Common Deferments:
DHAR, DSCH, DUEM

YES

Is borrower eligible for any deferments?

NO

Is borrower eligible for any forbearance?

"As a reminder, you can still make payments during your deferment or forbearance."

Probing questions to ask:

1. What caused the difficulty?
2. Are you looking for short-term or long-term relief?
3. Are you still in school?
 - If yes, are you in school at least half time?
 - If no, do you plan to go back to school?
4. Are you working?
 - If yes, how many hours per week are you working?
 - If no, are you actively seeking employment?
5. How much can you afford to pay?

Forbearance should not be considered until all other options have been exhausted.

1 of 2

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NAV-02071059

Repayment Options Guide

Types of Borrowers	PROS	CONS	Talking Points
Extended Repayment <ul style="list-style-type: none"> Borrowers looking for a lower payment Borrower looking for consolidation Borrower with at least \$30,000 balance Borrowers looking for long-term relief Borrowers who are underemployed. 	<ul style="list-style-type: none"> Lower monthly payments Payments go towards principal and interest Can be processed immediately. Phone/MYL One-time Processing (no annual renewal) 	<ul style="list-style-type: none"> Interest accrues over longer term Higher total payment over the life of the loan 	<ul style="list-style-type: none"> Offers a lower monthly payment without the need for consolidation Can return to non-extended level repayment plan at any time No annual renewal
Graduated Repayment <ul style="list-style-type: none"> Borrower is looking for short-term relief Recent graduates Borrowers not working in their field of study Borrowers with high earning potential 	<ul style="list-style-type: none"> Lower (interest-only) payment for first 2-4 years Can be combined with Extended Repayment Can be processed immediately. Phone/MYL 	<ul style="list-style-type: none"> Not paying principal during this time Payments will increase after 2-4 years 	<ul style="list-style-type: none"> Good short-term relief You can always make payments above minimum if you are able You can return to a non-extended level repayment at any time
Income Based Repayment (IBR) <ul style="list-style-type: none"> Borrowers experiencing long-term financial hardship Low income relative to loan balance Borrowers who are underemployed Borrowers in flat income professions (teacher, nurse, etc) 	<ul style="list-style-type: none"> Loans are forgiven after 25 years of payments Customer benefits are not affected by IBR One application for both ED/SLM loans Interest on SUBSIDIZED portion paid by ED for 3 years 	<ul style="list-style-type: none"> Involved application process - must reapply annually Cannot change due date Customer payment may be less than according interest Interest capitalizes when borrower leaves IBR 	<ul style="list-style-type: none"> Good long-term relief since payments are based on adjusted gross income If you continue to make payments on time, you may qualify for our loan forgiveness program You can apply for relief on each loan individually You can complete the application on-line at salliemae.com
Income Sensitive Repayment (ISR) <ul style="list-style-type: none"> Borrower experiencing a temporary financial hardship 	<ul style="list-style-type: none"> Payments based on 4-25% of gross monthly income Can be used for 60 months Payment percentage can be changed Borrower still eligible for Forb/Defer during ISR. 	<ul style="list-style-type: none"> Must reapply annually Borrower must provide proof of income ISR does not count against standard terms 	<ul style="list-style-type: none"> You only have to complete one application for all of your loans You can complete the application on-line at salliemae.com
Deferment <ul style="list-style-type: none"> Deferment should only be considered after it has been determined that no lower payment option is acceptable 	<ul style="list-style-type: none"> Temporarily suspends monthly payment Interest on SUBSIDIZED portion of loan is paid by ED Borrower can make interest payments during deferment 	<ul style="list-style-type: none"> Unpaid interest will be added to loan balance at end of deferment This increases overall balance, pay back amount and monthly payment amount 	<ul style="list-style-type: none"> Deferment may be good alternative to forbearance DUEM can be processed for 6 mos at a time All other deferments can be processed for 12 months at a time Borrower may be eligible for same deferment more than once
Forbearance <ul style="list-style-type: none"> Forbearance should only be considered after it has been determined that no lower payment option is acceptable and borrower is not eligible for any deferments Forbearance can be used to bring account current while customer is addressing long-term solution 	<ul style="list-style-type: none"> Temporarily suspends monthly payment but interest will continue to accrue on a daily basis Borrower can make interest payments during deferment Avoid negative credit reporting and halt collection calls by bringing account up to date immediately 	<ul style="list-style-type: none"> Borrower is responsible for all unpaid interest Unpaid interest will be added to loan balance at end of deferment This increases overall balance, pay back amount and monthly payment amount 	<ul style="list-style-type: none"> Forbearance results in higher loan costs overall, you may want to consider a deferment or other repayment plan Forbearance can be processed for 12 months at a time, up to a maximum of 60 months

Can Make Monthly Payments

CAN NOT Make Monthly Payments

Mention Public Service/Teacher Loan Forgiveness Programs (if applicable); Mention benefits (auto-debit, etc) as a way to reduce payment

2 of 2

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF DELAWARE

CONSUMER FINANCIAL :
PROTECTION BUREAU : Civil Action No.
vs. : 3:17-CV-00101-RDM
NAVIENT CORPORATION, et al. :

- - -
Philadelphia, Pennsylvania
Friday, November 16, 2018
- - -

ORAL DEPOSITION of JOHN MATTHEW BAILER, taken
pursuant to notice, held in the offices of U.S.

Attorney's Office, One Independence Mall, Suite 1250,

Philadelphia, Pennsylvania 19106 commencing at 9:36

a.m., before Angela M. King, RPR, Court Reporter -

Notary Public there being present.

1 A. I don't remember.

2 Q. Was there any email traffic regarding the
3 availability of a zero dollar payment IBR?

4 MS. DRYHURST: Objection to form.

5 THE WITNESS: I think during my tenure,
6 there was more email traffic around that
7 concept. My recollection when we first started
8 at servicing, it wasn't clear to me, anyway,
9 that that was an option.

10 BY MR. LEE:

11 Q. And you mentioned toward the end of your tenure.
12 Are we talking the first couple of months of 2012?

13 A. Yeah, thereabouts.

14 Q. Okay.

15 A. End of '11, early '12. Could have that wrong, but
16 it generally, you know, eight years ago, six years ago.
17 I thought it was towards the end of my tenure, we were
18 getting more guidance from the department on that
19 topic.

20 Q. So this document Exhibit 12 was being developed
21 prior to when you became aware that zero dollar payment
22 IBR was an option?

23 MS. DRYHURST: Objection: Misstates
24 testimony.

25 THE WITNESS: My recollection is at the

Exhibit 4

TRANSCRIPT OF PROCEEDINGS

CONSUMER FINANCIAL)	
PROTECTION BUREAU,)	
)	
Plaintiff,)	Case No. 3:CV-17-00101
)	
-vs-)	
)	
NAVIENT CORPORATION, ET AL.,)	
)	
Defendants.)	

DEPOSITION OF: Suzanne Croft

Pages: 1 through 175
Place: Indianapolis, Indiana
Date: November 27, 2018

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
contracts@hrccourtreporters.com

1 A I believe so.

2 Q What is the repayment hierarchy?

3 A What is it specifically?

4 Q Sure. I mean, describe it specifically or
5 generally.

6 A So, generally, it's asking a customer probing
7 questions to get them into the best option
8 possible.

9 So that can vary, but essentially we would
10 want the customers to be in some sort of a
11 repayment option. And, then, if that doesn't work,
12 you would move down to any sort of deferments that
13 could be available and then forbearances. That's
14 general.

15 Q Okay. Going to that first tier that you discussed,
16 the options that you would present before
17 deferments or forbearances, you called them
18 repayment options.

19 What are those repayment options?

20 A At that point?

21 Q Correct.

22 A I don't remember all of the repayment options that
23 were available at that point in time, but I do
24 remember graduated repayment options, maybe
25 extended repayment options.

1 Q Okay. Any others?

2 A At that point, not that I remember.

3 Q Did it change over time?

4 A Yes.

5 Q And how did it change?

6 A The income-driven repayment options started to
7 integrate into our everyday repayment options
8 offering.

9 Q And when did the IDR plan start to integrate?

10 A I don't remember the exact time.

11 Q Okay. But at least as of 2012, they weren't
12 integrated into the repayment hierarchy?

13 MS. BILBROUGH: Object to the form.

14 Q You can answer.

15 MS. BILBROUGH: You can answer if you know.

16 A When I -- I don't remember the exact date.

17 Q Okay. So just going back to 2012, you indicated
18 that the repayment options were graduated and
19 extended, and IDR was integrated at a later point
20 in time; is that right?

21 A Correct.

22 Q Okay. What was taught during the training about --
23 was the concept of an IDT discussed during the
24 training?

25 A Yes.

Exhibit 7



From: Sheikh, Mike <O=SIEXCH/OU=EXCHANGE/ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E34555>
To: Fox, Annie; Hensel, Mark
CC: Stulken, Hans; Hanrahan, Sean; Gramlich, Lisa; Stine, Tracy; Smith, Robyn; Firlain, Laura; Harris, Natalie D.; Rogula, Scott; Beckley, Greg; Jeckell, Hollie
Sent: 2/20/2014 3:32:57 PM
Subject: RE: Weekly Sample of Serv (Offshore) - week ending 2/21/14

Hi Annie;

We have no objections, please see the call summaries below:

Location	Agent	Segment ID	Date	Duration	CIN	Summary
BGO	San Lorenzo, Erick	898385119	2/17/2014	05:17	9733177583	<p>Summary: The customer called in requesting a forbearance because she was behind on her payments. The Specialist asked if the customer can pay the scheduled monthly amount to bring the account current. The customer said yes. The Specialist explained that she will be processing a FORA to bring the account current and read the script. The customer also asked about the late fees incurred on the account.</p> <p>Areas of improvement: - The Specialist could have acknowledged customer's expression of hardship. - The Repayment Hierarchy was not followed; the customer may have qualified for IBR or another Repayment Option. - The Specialist could have probed more specifically if the customer would be able to pay the monthly payment amount moving forward. - The Specialist should have advised the borrower of the correct monthly payment amount after the forbearance had been processed. When the customer asked about the fees, the Specialist said that it will go to the back end of the loan. The Specialist should have educated the customer on the accumulated late fees on the account and how the customer could address the fees. - The Specialist should have checked the forbearance window for the post forbearance payment amount in order to provide an accurate monthly payment amount. - The Specialist should have promoted the SallieMae.com </p> <p>Summary: The customer wanted to reprint her 1098e tax form but could not log in to her SallieMae.com account. The Specialist confirmed the customer's User ID and advised her to try logging in. The customer tried to sign in and mentioned that she may have forgotten her password also. The Specialist then reset the customer's password. The Specialist did a good job staying on the phone with</p>
MNL	Mendoza, Jhoanna Princess	898387190	2/17/2014	04:56	9334823861	

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NAV-02336040

					<p>the customer until they were able to log in.</p> <p>Areas of improvement:</p> <ul style="list-style-type: none"> - The Specialist should have acknowledged the customer's concern. - Since the account was in PIF-Consolidation status, the Specialist could have advised that the 1098e would only be available online until April. - The status of the online account was "Reset", there was no need to have the customer try to login. - The Specialist should have followed the Forgot User ID procedures on KS and not given hints to the customer.
BGO	Mascariñas, Liza	898379954	2/17/2014	05:33	<p>Summary:</p> <p>The customer setup Automatic Debit last month and was wondering if a payment was extracted for February (since the January extraction was successful). The Specialist verified that the account is still on automatic debit. The Specialist advised the customer to check with her bank if the payment was processed. The customer mentioned she will manually post a payment and requested to move the due date. The Specialist adjusted the due date as per the customer's request.</p> <p>Areas of improvement:</p> <ul style="list-style-type: none"> - The Specialist should have acknowledged customer's confusion about the payment not getting extracted. - The Specialist would sound more confident by avoiding statements like "I don't know" - The Specialist stated "I can't..." or "I couldn't..." multiple times - The Specialist should have advised the borrower to allow 2-4 days processing time for the payment to post since the due date was on a weekend. - The Specialist could have promoted online payments via SallieMae.com. - The Specialist should have confirmed GJ97 on the account since the Due Date was updated <p>Update: The weekend Auto Debit extraction has posted to the account as well as the borrower's manual payment. The borrower was contacted and wants to leave both payments on her account.</p>

MNL	Galang, Jan Michael	898362924	2/17/2014	04:35	9799392797	<p>Summary: The customer called to request a copy of the tax letters for two borrowers she cosigned for. The Specialist provided the amounts. The customer also asked for a tax number, which the Specialist provided.</p> <p>Areas of improvement: - The Specialist answered the call with a seven second delayed greeting. - The Specialist could have advised the caller to consult a tax advisor - The Specialist seemed distracted from the start of the call. Screenshot shows that the Specialist was working on something else at the start of the call and asked for the customer's name twice. - The Specialist should have verified the customer's email address when he pitched the cross-sell SM Login Reminder. - The Specialist should have pitched the Upromise MasterCard cross-sell item.</p>
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From: Fox, Annie

Sent: Wednesday, February 19, 2014 9:07 AM

To: Sheikh, Mike; Hensel, Mark

Cc: Stuilken, Hans; Hanrahan, Sean; Gramlich, Linda; Stashik, Lisa; Stine, Tracy; Smith, Robyn; Firlin, Laura; Harris, Natalie D; Rogula, Scott; Beckley, Greg; Jeckell, Holli

Subject: Weekly Sample of Serv (Offshore) - week ending 2/21/14

Good afternoon,

The Serv calls below have been sent to your NICE Universe for review. Please note we will be listening to these calls during the calibration. If there are any objections, please let me know by Friday 2/21 at 2:00 pm. Otherwise, they will be sent to Jack by 4:00 pm.

Location	Agent	Date/Time	Duration	Segment	CIN
BU	San Lorenzo, Erick	2/17/2014 11:51	0:05:17	898385119	9733177583
MA	Mendoza, Jhoanna Princess	2/17/2014 11:55	0:04:56	898387190	9334823861
BU	Mascarinas, Liza	2/17/2014 11:40	0:05:33	898379954	9473967705
MA	Galang, Jan Michael	2/17/2014 11:05	0:04:35	898362924	9799392797

Thanks!

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NAV-02336042

NAV-02336043

Annie

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Exhibit 8

From: Shekhi, Mike <O=SIEXCHOU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E34555>

To: Jeckeli, Hollie; Hensel, Mark

CC: Stulken, Hans; Stine, Tracy; Stashik, Lisa; Tipton, Star; Johnson, Jeffrey; Tate, Brian; Champi, Jacqueline; Robinson, Hillary; Firtlein, Laura; Catt, George; Smith, Robyn; Lanham, Brian; Beckley, Greg; Duckiewicz, Diane; Wisniewski, Jeanne

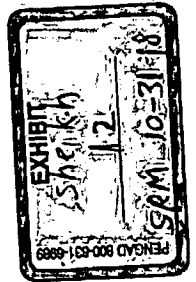
Sent: 4/4/2016 2:57:27 PM

Subject: RE: Weekly Sample of Offshore Serv Calls - Week ending 4/3/16

Hi Hollie,

Please see the call summaries below. We have no objections.

Specialist	Date/Time	Duration	Recording ID	CIN	Comments
Ellen Grace V. Ramires	3/21/2016 16:25	4:26:00	a5f53d14-40e9-d0c2-8cbe-c55279ac0001	9493998681	<ul style="list-style-type: none"> The Solutions Navigator updated the phone number that does not belong to the borrower. The borrower said the number is her husband's. The Solutions Navigator failed to advise the acceptable document for name change. The Solutions Navigator failed to provide the fax number to where the borrower can send the document for name change. The Solutions Navigator failed to promote Navient.com. The Solutions Navigator could have informed the borrower that she can see the changes on her MPA in May on our web site. The Solutions Navigator could have also informed the borrower that she can upload the document for her request for name change on line The Solutions Navigator exceeded the 2 minutes hold time that she advised.
Katrina Yanga	3/23/2016 8:41	4:30:00	73793e14-f64b-d0b1-8cbe-c55279ac0001	9943691208	<ul style="list-style-type: none"> The Solutions Navigator failed to promote the Navient web site, but promoted StudentLoans.gov for IBR (defect for now but will be revisited by Hollie) The Solutions Navigator could have informed the borrower that she can upload the supporting document needed for her IBR on line. The agent could have also offered DUEM as an alternative option. Aside from asking the borrower if the all the loans were taken out for her studies, it is still the duty of the Solutions Navigator to check if all loans are qualified for IBR. There is a Parent Plus loan included on the Consolidated loan making this particular loan ineligible for IBR.
Rodel Prado	3/22/2016 19:58	4:49:00	d94f3e14-f403-d07f-8cbe-c55279ac0001	9378207859	<ul style="list-style-type: none"> The Solutions Navigator could have verbally acknowledged the customer's situation, but overall call handling showed proper empathy and ownership. No defect in Acknowledgement. The Solutions Navigator should have asked questions that will determine the borrower's eligibility for a repayment plan like IBR or Deferment before processing Forbearance. The Solutions Navigator should have followed the Repayment Hierarchy. The Solutions Navigator gave a 15 day time frame to receive a letter. The Solutions Navigator failed to inform the borrower how they will receive the Forbearance Confirmation letter - via email The Solutions Navigator should have educated the borrower about the GPR8 letter so that he can switch his permissions for the 1098e to email.
Luisito Young	3/24/2016 14:20	4:48:00	8cde3e14-4330-d011-8cbe-c55279ac0001	9558051056	<ul style="list-style-type: none"> The Solutions Navigator provided the User Id without asking the required security questions. The Solutions Navigator failed to address the borrower properly. The Solutions Navigator should have addressed the borrower with his proper courtesy title and last name - "Mr. Dekruyf" The Solutions Navigator should have asked questions to determine the reason or probable cause why the borrower was not able to login to his on line account The Solutions Navigator failed to inform the borrower of the password complexity. As per KS DOC: 107324 You MUST advise the customer that the new password they create must be at least 8 characters in length and must contain at least one number and one letter



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NAV-03094986

Mark/Mike,

As mentioned on the calibration on Tuesday the calls below will be send to Jack next week for review. If you could provide a summary for each interaction by COB 4/7/16, I would appreciate it.

Location	Specialist	Date/Time	Duration	Recording ID	CIN
MA	Ellen Grace V. Ramires	3/21/16 4:25 PM	4:26:00	a5f53d14-40e9-d0c2-8cbe-c55279ac0001	9493998681
MA	Katrina Yanga	3/23/16 8:41 AM	4:30:00	73793e14-f64b-d0b1-8cbe-c55279ac0001	9943691208
BU	Rodel Prado	3/22/16 7:58 PM	4:49:00	d94f3e14-f403-d07f-8cbe-c55279ac0001	9378207859
BU	Luisto Young	3/24/16 2:20 PM	4:48:00	8cda3e14-4330-d011-8cbe-c55279ac0001	9558051056

Thanks,
Holly

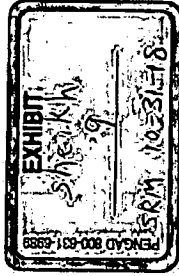
From: Shaikh, Mike <O=SIEXCH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E3455>

To: Fox, Annie; Hensel, Mark

CC: Suilken, Hans; Stashik, Lisa; Jeckell, Hollie; Smith, Robyn; Firlain, Laura; Standish, Troy; Lanham, Brian; Champi, Jacqueline; Tate, Brian; Catt, George; Tipton, Star; Robinson, Hillary; Beckley, Greg; Stine, Tracy; Wisniewski, Jeanne

Sent: 1/6/2016 4:59:49 AM

Subject: RE: Weekly Sample of Serv ofshore- Week ending 1/8/16



We have no objections. Please see the summaries below.

Location	Specialist	Date/Time	Duration	Recording ID	CIN	Internal Calibration Comments
BU	Chadler, Keith Barill	1/21/2015 10:13AM	6:12	c652114-75c4- d098-8b0b- ed79d6890001	9066527304	<p>The customer called for assistance filling out the IBR paper application form. The Solutions Navigator guided the customer and advised options to fax the application back.</p> <p>Observations:</p> <ul style="list-style-type: none"> • Empathy: The Solutions Navigator lacked empathy and could have used more BCC statements • Probing: The Solutions Navigator should have asked probing questions to establish the customer's eligibility for IBR • Best Resolution: Coaching for not advising the option to submit a paperless application via studentloans.gov • Recap & Customer Education: The Solutions Navigator could have educated on IBR processing timeframe • Self-Service: Coaching for web help - The Solutions Navigator should have educated the customer about where/how to use the upload feature once logged on. • Call Organization: Coaching on over-validation - Asking for the DOB was unnecessary. The Solutions Navigator should ask caller's name before clicking on 'Yes' <p>The customer called asking to postpone payment until the end of the month but mentioned she can start making payments by January. The Solutions Navigator processed 1 month FOIRV. Good empathy and ownership!</p> <p>Observation:</p> <ul style="list-style-type: none"> • Recap & Customer Education: The customer could have been advised that we have lower repayment options for short term and long term relief <p>The customer called requesting to resend a deferment application but was unsure what was previously sent. The Solutions Navigator sent a FRAT application form.</p> <p>Observations:</p> <ul style="list-style-type: none"> • Empathy: The Solutions Navigator could have used stronger empathy statements • Probing: The Solutions Navigator should have asked probing questions to determine the customer's situation. We could have looked into deferment eligibility. • Recap & Customer Education: The Solutions Navigator misinformed the customer that if he gets approved for Total Permanent Disability then his loans will be forgiven • Self-Service: Coaching for advising upload.navient.com instead of educating the customer on the upload feature once logged into MYL • Tool Utilization: Coaching. The Solutions Navigator did not determine if the customer had an existing User ID <p>The customer called because she had questions about her Total Permanent Disability application. She said she was told by Nelnet that she is no longer required to make payments to Navient. The Solutions Navigator processed a three month forbearance to postpone payments while waiting for updates on the Total Permanent Disability application.</p> <p>Observations:</p> <ul style="list-style-type: none"> • Empathy: The Solutions Navigator lacked empathy; could have used BCC • Probing: The Solutions Navigator should have asked probing questions to establish the customer's eligibility for TPD. The Solutions Navigator did not explore option to place loans in lower repayment option until the claim is processed • Best Resolution: No attempt was made to collect a payment or partial payment • Recap: Coaching for not educating the customer about late fees assessed on the account • Self-Service: The Solutions Navigator could have promoted the option to update the phone number on MYL • Tool Utilization: The Solutions Navigator could have been proactive in checking permissions and reverse verifying the customer's email address • Documentation: No need to corr GXM7. The Solutions Navigator should have noted that the TPD application was sent to Nelnet
MA	Evelyn Alcantara	12/23/2015 6:00PM	6:21	d75d2214- a48b-40a1-8b0b- ed79d6890001	9228155027	
BU	Kathreh Arjay Garcia	12/23/2015 12:33PM	7:08	918a2214- e7e5-d0a- 8b0b-ed79d6890001	9669038428	
MA	Jhanne Sardea	12/23/2015 5:45PM	6:26	a4ab2214- b293-d010-8b0b- ed79d6890001	9662038033	

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NAV-01274339

(not Navient)

From: Fox, Annie

Sent: Tuesday, January 05, 2016 3:24 PM

To: Hensel, Mark; Sheikh, Mike

Cc: Stuliken, Hans; Stashik, Lisa; Jeckell, Holly; Smith, Robyn; Firein, Laura; Standish, Troy; Lanham, Brian; Champi, Jacqueline; Tate, Brian; Catt, George; Tipton, Star; Robinson, Hillary; Beckley, Greg; Stine, Tracy; Wisniewski, Jeanne

Subject: Weekly Sample of Serv offshore- Week ending 1/8/16

The Serv offshore calls below are available for review. Please note we will be listening to these calls during the calibration. Please have summaries to me by Thursday 1/7 at 2:00 pm. If there are any objections, let me know, otherwise they will be sent to Jack by 4:00 pm.

Location	Specialist	Date/Time	Duration	Recording ID	CIN
BU	Chester Keith Bacilli	12/21/2015 10:13AM	6:12	cbf52114-75c4-d098-8b0b-ed79d6890001	9066527304
MA	Evelyn Alcantara	12/22/2015 6:00PM	6:21	d75d2214-a48b-d0a1-8b0b-ed79d6890001	9229155027
BU	Kathrein Arjay Garcia	12/23/2015 12:33PM	7:08	919a2214-e7e5-d0ee-8b0b-ed79d6890001	9569038428
MA	Jhanine Sardea	12/23/2015 5:45PM	6:26	a4ab2214-b293-d010-8b0b-ed79d6890001	9682638033

Thanks!
Annie

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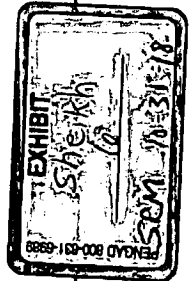
NAV-01274340

From: Sheikh, Mike <O=SIEXCH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E34555>
To: Fox, Annie; Hensel, Mark
CC: Stuliken, Hans; Stashik, Lisa; Beckley, Greg; Jeckell, Holli; Smith, Robyn; Firleir, Laura; Hewes, Christi; Lipps, Greg; Montgomery, Bob L; Standish, Troy; Lanham, Brian; Fegans, Ann; Kassem, Mohammed; Mousa, Brian; Langhom, Jacqueline; Tate, Brian; Cati, George; Tipton, Star; Robinson, Hillary; Stine, Tracy; Rogula, Scott
Sent: 4/16/2015 11:59:57 AM
Subject: RE: Weekly Sample of Offshore - Week ending 4/17/15

All,

We have no objections, please see the call summaries below.

Location	Specialist	Date/Time	Duration	Recording ID	CIN	Summary
Baguio	Jimenez, Jona D.	03/30/2015 2:25:03		e959d013-301d-d0da-8aa7-b898f5a10001	9571570712	<p>The customer called because she's having difficulty logging in to her MYL account. Due Diligence was performed and the customer was provided the correct User ID. Jona advised the customer to first click on the Forgot User ID link, then the Forgot Password link. The call was disconnected without confirming that the customer was able to login.</p> <p>Coaching Points:</p> <ul style="list-style-type: none"> During validation, the customer initially provided a different last name but Jona already clicked on CARES saying that she is speaking to the account holder, and then later on asked for the customer's name again Jona should have acknowledged the customer's difficulty accessing her online account Rather than asking the customer to click on Forgot Password, Jona should have provided a temporary password since the User ID was already verified Documentation - Jona corr'd Deferment and Forbearance Question/Request but these topics were not discussed.
Manila	Yutan, Angelita F.	04/03/2015 2:174:39		c493d113-6c75-d0aa-8be0-01325f560001	9781336843	<p>The customer called because he forgot his User ID and password. Good ownership and acknowledgement statements. Forgot User ID procedures were followed. The resolution was to expire the User ID and advise the customer to create a new User ID & password. Customer mentioned he needed his tax information. Angel promoted the website and highlighted that the firm is available on Navient.com. Customer's account number was provided before the call ended. Good job performing a recap of what was discussed.</p> <p>Coaching Points:</p>



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NAV-01969038

						<ul style="list-style-type: none">• Angel could have educated the customer of the Forgot User ID and Forgot Password link for future reference.• Payment was briefly mentioned and customer said his father is the one sending the payment, Auto-Debit was not promoted• Jargon – The Solutions Navigator should use "social security number" instead of "social"
Baguio	Narciza, Kerby E.	03/31/2015 12:49	5:07	3ea3d013-1a32-d09e-8aa7-b898f5a10001	9813625679	<p>The customer called because she's having difficulty making payments and had previously requested for a deferment. She is aware that the account is past due and wanted to find out why her deferment did not go through. Kerby asked probing questions and determined that customer is receiving food stamps and Medicaid. DHAR was the option offered and advised that application will be received via email with a link to the website. FORA/FORM was processed correctly. The customer asked about "Federal Loan Forgiveness". Kerby mentioned TLF, PSLF and Disability Claim are the only ones being offered at this time.</p> <p>Coaching Points:</p> <ul style="list-style-type: none">• There was an empathy statement but was barely audible• IBR option should have been explored• Kerby should have explained that the previous DHAR app was processed on the account covering 07/15/14-10/31/14.• The customer should have been advised that she might still get collections calls and educate her of the late fees assessed• Kerby advised the customer to ask or find out more details about the loan forgiveness program she was informed about• Website should have been promoted• K109 letter was sent, however, Kerby did not ask the customer whether she would like her Permissions changed to email. It was only established that the customer would like the DHAR app sent via email.
Manila	Ragojo, Maricon P.	03/30/2015 11:12	4:29	644fd013-8086-d05a-8aa7-b898f5a10001	9822540263	<p>The customer called following up on her IBR application. ECS shows we received the app on 02/24/15. Maricon advised that there is no update yet. She explained that a courtesy hold was placed on the account. She also advised that the timeframe could take 30-60 business days and provided the next payment due date on the account. Good job promoting the website.</p> <p>Coaching Points:</p> <ul style="list-style-type: none">• Maricon should have acknowledged the customer's reason for call

A32

• The customer said she was having difficulty understanding what Maricon was saying. She could have asked the customer if the adjustment she made was better.

• An IDT should have been sent to have processing team look at the application since it has been more 1 month since it was received (*Note: IBR was processed on the account 2 days after the call)

From: Fox, Annie

Sent: Tuesday, April 14, 2015 4:53 PM

To: Sheikh, Mike; Hensel, Mark

Cc: Stullken, Hans; Stashik, Lisa; Beckley, Greg; Jeckell, Holli; Smith, Robyn; Firlein, Laura; Hewes, Christi; Lipps, Greg; Montgomery, Bob L; Standish, Troy; Lanham, Brian; Fegans, Ann; Kassem, Mohammed; Mousa, Brian; Langhorn, Jacqueline; Tate, Brian; Catt, George; Tipton, Star; Robinson, Hillary; Stine, Tracy; Rogula, Scott

Subject: Weekly Sample of Offshore - Week ending 4/17/15

The Offshore calls below are available for review. Please note we will be listening to these calls during the calibration. Please have summaries to me by Thursday 4/16 at 2:00 pm. If there are any objections, let me know, otherwise they will be sent to Jack by 4:00 pm on 4/17.

Location	Specialist	Date/Time	Duration	Recording ID	CIN
BU	Jimenez, Jona D.	03/30/2015 2:25	5:03	e959d013-301d-d0da-8aa7-b898f5a10001	9571570712
MA	Yutan, Angelita F.	04/03/2015 2:17	4:39	c493d113-6c75-d0aa-8be0-01325f560001	9781336843
BU	Narciza, Kerby E.	03/31/2015 12:49	5:07	3ea3d013-1a32-d09e-8aa7-b898f5a10001	9813625679
MA	Ragojo, Maricon P.	03/30/2015 11:12	4:29	644fd013-8086-d05a-8aa7-b898f5a10001	9822540263

NAV-01969041

Thanks!
Annie

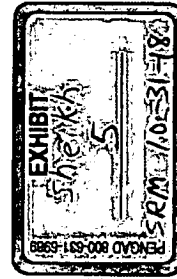
A34

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From: Sheikh, Mike <O=SIEXCH/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E34555>
To: Fox, Annie; Hensel, Mark
CC: Stullken, Hans; Gramlich, Linda; Stashik, Lisa; Beckley, Greg; Jeckell, Holli; Stine, Tracy; Smith, Robyn; Firlein, Laura; Rogula, Scott; Standish, Troy; Lanham, Brian; Fegans, Ann; Hewes, Christi; Kassem, Mohammed; Bremer, Deanna; Mousa, Brian; Lipps, Greg; Montgomery, Bob L
Sent: 12/11/2014 6:26:05 PM
Subject: RE: Weekly Sample of Serv offshore - week ending 12/12/14

Sorry for the delay, below are the call summaries.

Location	Specialist	Date/Time	Duration	Segment	CIN	Call Summary
BU	Jenny Alfonso	11/28/2014 16:32 4:17	1266121882	9381484254		<p>Summary The customer called advising that she received a call about a delinquency on her account. The Solutions Navigator advised status of loans and confirmed that loan 9584 was past due. She offered to reapply payments and verified how payments are being made. The customer advised that she was in auto debit. Jenny reapplied payment and advised the customer that it may take 48 hours for changes to post.</p> <p>Summary The customer advised that he initially applied for DUEM and that he is now employed working more than 40 hours a week. Claizze offered FRAT and advised the customer that he needs to submit his application together with his proof of income. She also advised that she will process a payment postponement (FORM) while waiting for the application and advised that next due date is going to be in February.</p>
MA	Claizze Lirio	12/5/2014 17:00 7:00	1269171892	9273817230		<p>Coaching The Solutions Navigator should have congratulated the customer on his new job.</p> <p>Claizze should have reached out to Help Queue or a Supervisor for assistance processing the FORM. Claizze should have asked questions to determine the customer's situation and offered a lower repayment option or IBR.</p> <p>Account Processing Defect</p>



Confidential Pursuant to Protective Order

NAV-03086171

							The Solutions Navigator did not process FORM as promised. The customer is expecting his payment for December to be postponed.
BU	Rachelle Nawol	11/24/2014 17:27	5:00	1264686584	9465445267	<p>Summary The customer called concerned because her MPA had increased. Rachelle advised that the previous Graduated repayment plan had expired and offered to process another one. Rachelle advised the terms and customer agreed.</p> <p>Coaching The account was past due, Rachelle should have cleared the delinquency before processing the lower repayment. She could have reached out to Help Queue for assistance clearing the delinquency. IBR should have been explored prior to Graduated repayment.</p>	
MA	Cora Vergara	12/5/2014 16:32	6:41	1269161916	9934075609	<p>Summary The customer advised that his IBR expired and asked if and how he could apply for another. Cora advised him to send another application together with proof of income or last year's income tax return. She encouraged the customer to print the form online and assisted him on how to fill out the form. She also advised that the form can be sent to Navient.</p>	

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NAV-03086172

From: Fox, Annie
Sent: Tuesday, December 09, 2014 4:35 PM
To: Hensel, Mark; Shelkh, Mike
Cc: Stulken, Hans; Gramlich, Linda; Stashik, Lisa; Beckley, Greg; Jeckell, Holli; Stine, Tracy; Smith, Robyn; Friein, Laura; Rogula, Scott; Standish, Troy; Lanham, Brian; Fegans, Ann; Hewes, Christi; Kassem, Mohammed; Bremer, Deanna; Mousa, Brian; Lipps, Greg; Montgomery, Bob L
Subject: Weekly Sample of Serv offshore - week ending 12/12/14

The Serv calls below have been sent to your NICE Universe for review. Please note we will be listening to these calls during the calibration on Wednesday. If there are any objections, please let me know by Thursday 12/11 at 2:00 pm. Otherwise, they will be sent to Jack by 4:00 pm.

Location	Specialist	Date/Time	Duration	Segment	CIN
BU	Jenny Alfonso	11/28/2014 16:32	4:17	1266121882	9381484254
MA	Claizze Lirio	12/5/2014 17:00	7:00	1269171892	9273817230
BU	Rachelle Nawol	11/24/2014 17:27	5:00	1264686584	9465445267
MA	Cora Vergara	12/5/2014 16:32	6:41	1269161916	9934075609

Thanks!
 Annie

Confidential Pursuant to Protective Order

NAV-03086173

Exhibit 11

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF DELAWARE

CONSUMER FINANCIAL PROTECTION :
BUREAU, :
 :
vs. : CASE NO.
 : 3:17-CV-00101 RDM
 :
NAVIENT CORPORATION, ET AL. :

DEPOSITION

DEPONENT: Johnathan Powell
DATE: Tuesday, July 24, 2018
TIME: 9:33 a.m.
PLACE: 235 North Washington Avenue
Scranton, PA
REPORTER: Steven R. Mack
SOLICITOR: Nicholas Jabbour
David Dudley

1 You know, we have all different kinds
2 of call listening, so it's hard to enumerate.

3 Q. What is the minimum requirement for the
4 number of calls that you have to listen to for each
5 agent each month?

6 A. It's around that five to ten. I don't
7 know the exact number there.

8 Q. Is there a policy document that indicates
9 an exact number?

10 A. No, there's not a specific document or
11 anything.

12 Q. Is there a policy document that sets forth
13 the procedures for listening to calls?

14 A. Not that I'm aware of. I mean I --
15 honestly, I've been there so long that they -- they
16 go over that stuff with new supervisors, so there --
17 I should say I don't have awareness of that because
18 I've been doing it for so long, you know? So . . .

19 Q. How do you choose the minimum five to ten
20 calls you listen to per month for an individual
21 agent?

22 A. Certainly. So -- so we as supervisors
23 have to listen to, you know, a call that's longer
24 than 15 minutes for each agent. The team leaders
25 have to listen to calls that are longer than 10

1 minutes.

2 And then we essentially when we coach
3 our agents we listen to, you know, shorter calls and
4 medium calls. I listen to calls with my agents
5 almost every time I meet with them, so I probably
6 listen to, you know, two a coaching at least.

7 Q. So for the five to ten minimum per month,
8 one has to be longer than 15 minutes. Are there any
9 other criteria?

10 A. Not specifically. All right. So there --
11 there's different reports, like the low talk time
12 report. So if somebody comes up on that for, you
13 know, going under a certain amount of time in
14 resolving an account, we're going to listen to that
15 call.

16 There's -- there's first call
17 resolution calls. So we kind of -- you know, if --
18 if the borrower does not get the help that they need
19 to get into the right repayment option, so if
20 somebody doesn't explain.

21 You know, if they're going through an
22 income-driven repayment plan and the borrower still
23 needs assistance, we're going to help coach that
24 agent on how they could better provide like a hey,
25 here's how you fill out this application, let me

1 need to listen to, and that we listen to them to
2 verify everything was done correctly.

3 Q. Does that report contain every instance in
4 which a call was under 3 minutes and 30 seconds and
5 resulted in forbearance or is it something else?

6 A. Forbearance primarily. If they did a
7 payment under that amount, if they probably did like
8 a graduated repayment option. Those are pretty much
9 the -- and also if they did like a -- I don't know
10 how to describe it. Like a FORA FORN, which is like
11 what we use to -- a temporary forbearance we place
12 that's like -- the FORN is non-capitalizing. You
13 know, in case we send somebody paperwork to fill out
14 or something to give them the 60-day hold that's
15 non-capitalizing to, you know, apply for an
16 income-driven repayment plan or a deferment, those
17 calls as well that are under like a certain -- that
18 certain like threshold of 3 minutes and 30 seconds.

19 And we do it as like a check to make
20 sure they're doing everything correctly and -- you
21 know, because sometimes people call in and they're
22 very specifically that they want things, but we like
23 to have those checks in place.

24 (Reporter requested clarification of
25 a term.)

1 Q. -- earlier calls on that screen that you
2 see, right?

3 A. Yes.

4 Q. Okay. Are there any other tools that you
5 can think of to kind of expedite locating a call if
6 you know the date and the borrower name but not
7 necessarily the phone number?

8 A. By the date and borrower name, no. In the
9 past like if I struggled to find a call, I maybe
10 reached out to my dialer team and said hey, can you
11 help me find this call with this phone number
12 attached to it like if I knew it was via a certain
13 phone number and maybe they have helped me. But
14 yeah, not -- not really by borrower name, no, not
15 that I could think of. But there might be. I
16 don't -- I'm not really aware.

17 Q. Okay.

18 A. It's I usually don't struggle to find.
19 Like it's pretty easy to find the calls most of the
20 time, you know?

21 Q. Okay. Have you ever not been able to find
22 a call?

23 A. No.

24 Q. And when you were using the NICE software
25 instead of ICBM, was it the same search criteria

1 that you could use to locate calls?

2 A. It's been some time, so I believe it was
3 pretty similar. I haven't used them forever,
4 honestly, you know, so the thousands of calls I've
5 listened to, you kind of -- it's kind of a blur, but
6 I -- from what I remember, it was similar.

7 Q. Okay. Were there any other systems you
8 used, you've used during your time at Navient to
9 listen to calls besides ICBM and NICE?

10 A. Not that I can remember, no. No.

11 Q. Okay. And just so I understand all the
12 criteria that you can search by in ICBM. I know
13 we've been through phone number, we've been through
14 the date. There's the recording ID and the agent.
15 Are there any other criteria that you can search by?

16 A. Just the couple other ones I mentioned to
17 you. By like the person who scored a quality call,
18 the person who was scored. There is other criteria;
19 just nothing that I really use, you know?

20 Q. Right. And you said -- remind me. Did
21 you say you could search by disposition if it was a
22 CRS call?

23 A. Correct. You could select like, you know,
24 includes these words in the disposition or it
25 doesn't include this, that kind of thing. Like if,

1 and, or statements somewhat.

2 Q. Okay. Was there ever a time in NICE when
3 you couldn't locate a call you were looking for?

4 A. No, I honestly have never had a time that
5 I've run into where I couldn't find a call.

6 Q. Have you ever had a situation where
7 someone was placed into forbearance without any
8 contact whatsoever? So in other words, there was no
9 call with the borrower, there was no -- there was no
10 forms submitted by the borrower. It was basically
11 fraudulently done without the borrower's permission
12 without any call whatsoever.

13 A. Yeah, I mean at some point there's been
14 agents who have done something of that nature. You
15 know, and then typically obviously when that happens
16 and it's discovered, we investigate further and kind
17 of take the appropriate action that's needed. A
18 PDA, coaching depending on how severe it was, you
19 know.

20 Q. Okay. In those situations how would --
21 you know, if you saw that -- how would that
22 situation be detected since there is no call to --
23 to locate?

24 A. Since there is no call to locate?

25 Q. Right. How would you -- how would you

1 we assessed them correctly. You know, I might bring
2 it up to my manager because it is pretty -- you
3 know, that agent might need a lot of coaching to get
4 that call flow straightened out.

5 You know, I definitely would
6 obviously meet with that agent as well and kind of
7 come up with a coaching plan to -- to help them kind
8 of navigate through those calls better because that
9 should have -- that call should have been a lot
10 better for her and the customer, you know?

11 Q. Okay. Would a call like that
12 automatically trigger any disciplinary action? Or
13 would that be like a verbal warning?

14 A. Yeah, I mean for -- depending on the
15 infraction and the level, yeah, we definitely would
16 take the appropriate steps based on that level of
17 risk for those specific infractions.

18 Q. Okay. If there was no compliance issue.
19 Let's say that the agent presented all of the
20 information, you know, about say forbearance
21 accurately --

22 A. Sure.

23 Q. -- and the big issue was just that she did
24 not go through income-driven repayment with the
25 borrower. She didn't adequately ask questions to

1 probe the borrower's situation and determine that
2 income-driven repayment might be appropriate for
3 that borrower's circumstance, but otherwise every
4 other aspect of the call was fine.

5 A. Sure.

6 Q. Would that only warrant a quality write-up
7 and not a compliance write-up?

8 A. So -- and there's not really a quality
9 write-up. The way that it would impact her quality,
10 that is if this is a score that went towards her
11 incentive and she fell under a certain percent, it
12 could reduce or even eliminate her bonus. So that
13 definitely could happen if it was that bad, you
14 know, because I probably would take off a lot of
15 points for this one.

16 But it also would, you know, be
17 followed up by me listening to the call with the
18 agent, trying to ask them what they saw was wrong
19 with it and kind of going over each piece and, you
20 know, trying to put that coaching plan into
21 practice, so . . .

22 Q. Would that be -- would this be a verbal
23 warning only?

24 A. I honestly am not a hundred percent sure
25 of what would be assessed, you know what I mean? So

1 I don't know.

2 Q. Okay. So again if there was no compliance
3 issue on the call and it was -- it was just --

4 A. Calling.

5 Q. -- it was just about not advising the
6 borrower about income-driven repayment options, how
7 would you treat that from -- from a quality
8 standpoint?

9 A. As far as scoring or just how I'd handle
10 it?

11 Q. In terms of what the consequences for the
12 employee would be.

13 A. Okay. Yeah, I mean there -- the direct
14 consequences would not be a write-up or something.
15 The direct consequences would be coaching, review
16 it, figure out what we need to do to change her
17 practices moving forward.

18 The score would be a direct
19 consequence which could trickle into her incentive,
20 you know what I mean? I could see an agent like
21 this who has those calls could be somebody who, if
22 you continued to speak to a borrower like that and
23 you don't really give them the proper explanation,
24 then sure, it could trigger escalation calls, which
25 maybe you have longer talk time now, maybe you're

1 not getting as many resolves, which maybe hurts your
2 performance because you're not really helping people
3 the way you should, you're not taking the right
4 steps, you know? Which tends to lead to that long
5 talk time.

6 So those are the impacts I think that
7 you would see, but again there's no direct -- there
8 would be no direct, you know, warning for that if
9 there was no compliance issues, no -- no PDA
10 exactly.

11 Q. Okay. So there would -- there would be no
12 verbal warning and no written warning that would
13 emerge from a call like that? Again if there were
14 no compliance issues, it was just about not properly
15 advising about repayment options.

16 MS. DRYHURST: Objection, form.

17 A. Correct. To clarify it, the only time
18 that -- you know, so typically, you know, if this
19 was my agent and this was a one-off call and she had
20 this call, and it was all quality stuff and I coached
21 her on it and a week passes and she doesn't improve?
22 You know, when you have people who you continue to
23 coach and they continue to make these mistakes and
24 maybe it doesn't fall into compliance?

25 Maybe then, you know, a week -- like

1 I said, we come up with an action plan or I could
2 talk to employee relations about potentially like
3 a -- I don't know exactly what they call it. Like a
4 pattern of -- of -- you know. But that would be in
5 a very intense situation where somebody -- you're
6 meeting with somebody and they're just not listening
7 to you and they're not correcting it. Typically
8 people correct their -- you know, they correct their
9 mistakes and they use the instruments that you give
10 them to be successful.

11 Q. Okay. So if this is just about not
12 properly advising about repayment options, no
13 compliance issues, all the information given is
14 accurate, it would be a coaching situation and you
15 would monitor it to determine if the problem
16 persists?

17 A. Yeah. Correct.

18 Q. Do you recognize that agent's voice at
19 all?

20 A. No. No idea.

21 Q. She referenced 60 months of voluntary
22 forbearance. Is 60 months still the maximum of
23 voluntary forbearance that's allowed?

24 A. It really depends on what -- what we're
25 looking at here. If they're commercial-based loans,